**Riverside International, Inc., Port Huron Division *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO and its Local 203.** Cases 7–CA–32333 and 7–CA–32625

March 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on September 16, 1991, in Case 7–CA–32333 and on November 29, 1991, in Case 7–CA–32625 (amended on December 19, 1991), the General Counsel of the National Labor Relations Board issued complaints,[1] which were consolidated for hearing on January 10, 1992, against Riverside International, the Respondent, alleging that it has engaged in certain unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the National Labor Relations Act. Although properly served with copies of the charges, the complaints and compliance specification, and the order consolidating complaints, the Respondent has failed to file an answer.

On March 2, 1992, the General Counsel filed a Motion for Summary Judgment. On March 4, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint in Case 7–CA–32625 states that unless an answer is filed within 14 days of service, all the allegations contained therein "shall be deemed to be admitted true and may be so found by the Board." In Case 7–CA–32333, the Respondent was advised in the complaint and compliance specification that unless an answer to the complaint and compliance specification was received within 21 days of service, all the allegations contained therein would similarly "be deemed to be admitted true and may be so found by the Board." The undisputed allegations in the Motion for Summary Judgment further disclose that, by letter dated January 23, 1992, the Regional attorney for Region 7 notified the Respondent that unless an answer to the complaints and compliance specification was received by January 31, 1992, a Motion for Default Judgment would be filed with the Board. To date, no answer has been filed by the Respondent.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Michigan corporation, maintains an office and place of business at 2401 20th Street, Port Huron, Michigan (the Port Huron plant). During the fiscal year ending October 1, 1991, a representative period, the Respondent manufactured, sold, and distributed at its Port Huron plant products valued in excess of $50,000 that were furnished to General Motors Corporation. During the same period, General Motors Corporation had gross revenues that exceeded $500,000 and manufactured at its various Michigan plants automobiles valued in excess of $50,000 which it caused to be sold and delivered to customers and distributors located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On December 10, 1975, the Union was certified by the Board in Case 7–RC–13180 as the exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit and has since been recognized as such by the Respondent, with such recognition having been embodied in successive collective-bargaining agreements the most recent of which is effective by its terms from November 1, 1989, to October 31, 1992.

Article 19 of the parties' current agreement provides that eligible unit employees will be paid vacation pay by no later than June 30 of each contract year. However, since June 30, 1991, the Respondent has, without the Union's consent, breached the vacation pay provisions of article 19 by making only partial payments in installments of the amounts due to eligible unit employees, and failing to date to pay the entire amounts due. The

[1] The complaint in Case 7–CA–32333 was issued jointly and consolidated for hearing with a compliance specification issued in the same case.

parties' agreement further provides that effective November 4, 1991, job classification wage rates were to be increased as set forth in article 13, section g, Exhibit A of that agreement. However, beginning on November 4, 1991, and continuing to date, the Respondent, without the Union's consent, breached the contractual wage rate increase provisions of article 13 by failing to implement the increased wage rates as prescribed in the agreement. We find that by engaging in the above conduct, the Respondent has refused to bargain with the employees' collective-bargaining representative within the meaning of Section 8(d), and has violated Section 8(a)(1) and (5) of the Act, as alleged.

## CONCLUSIONS OF LAW

By failing and refusing since June 30, 1991, to fully comply with the vacation pay provisions of article 19, and failing and refusing since November 4, 1991, to pay unit employees their wage increases as required by the wage rates increase provision of article 13 of its agreement with the Union, without the latter's consent, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), Section 8(d), and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be ordered to fully comply with the vacation pay provisions of article 19 by paying to eligible unit employees the amounts of vacation pay still owed them as set forth in the compliance specification, with interest to be computed on said amounts as described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), less tax withholdings required by Federal and state laws. We shall further order the Respondent to comply with the wage rate increase provisions of article 13 and to make unit employees whole by paying them the wage rate increases to which they are entitled under article 13, retroactive to November 4, 1991, in accordance with the Board's decision in *Ogle Protection Service*, 183 NLRB 682, 683 (1970), with interest as set forth in *New Horizons*, supra.

## ORDER

The National Labor Relations Board orders that the Respondent, Riverside International, Inc., Port Huron Division, Port Huron, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO and its Local 203, in the unit described below by failing to pay eligible unit employees all the vacation pay to which they are entitled under article 19 of the agreement, and by failing to implement the increased wage rates prescribed by article 13 of that agreement, without the Union's consent. The unit is:

> All production and maintenance employees, including truckdrivers and shipping and receiving employees employed by Respondent at its plants located at 1631 Dove Street, Port Huron, Michigan (Plant #1), 2401 20th Street, Port Huron, Michigan (Plant #2) and 184 Gratiot, Marysville, Michigan (Distribution Center and Plant #3); but excluding all office clerical employees, engineers, technical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the vacation pay provisions of article 19 of the parties' collective-bargaining agreement by paying eligible unit employees the amounts of vacation pay set forth next to their names in the compliance specification which represents the amounts still owed them, with interest, minus tax withholdings required by Federal and state laws, and make whole unit employees by implementing, retroactively to November 4, 1991, the increase in wage rates as required by article 13 of the parties' agreement, with interest, as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination or copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful to ensure compliance with this Order.

(c) Post at its facility in Port Huron, Michigan, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be

[2]If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO and its Local 203, in the unit described below by failing to pay eligible unit employees all of their vacation pay as required by article 19 of our agreement, and by failing to implement the increased wage rates as required by article 13 of that agreement, without the Union's consent. The unit is:

> All production and maintenance employees, including truckdrivers and shipping and receiving employees employed by Respondent at its plants located at 1631 Dove Street, Port Huron, Michigan (Plant #1), 2401 20th Street, Port Huron, Michigan (Plant #2) and 184 Gratiot, Marysville, Michigan (Distribution Center and Plant #3); but excluding all office clerical employees, engineers, technical employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply fully with the vacation pay provisions of article 19 and with the wage rates increase provisions of article 13 of our agreement with the Union.

WE WILL make eligible unit employees whole by paying them the vacation pay that remains owed to them, with interest, and by paying unit employees the increased wage rates, retroactive to November 4, 1991, required by article 13 of our agreement with the Union, with interest.

RIVERSIDE INTERNATIONAL, INC.,
PORT HURON DIVISION